

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS Master File No. 12-02311  
ANTITRUST LITIGATION  
\_\_\_\_\_  
Hon. Marianne O. Battani

FINAL APPROVAL HEARING  
Truck and Equipment Dealer Plaintiffs

BEFORE THE HONORABLE MARIANNE O. BATTANI  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Thursday, November 17, 2016

APPEARANCES:

FOR THE TRUCK AND  
EQUIPMENT DEALERS: J. MANLY PARKS  
**DUANE MORRIS, L.L.P.**

WAYNE A. MAKC  
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**DUANE MORRIS, L.L.P.**

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**DUANE MORRIS, L.L.P.**

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1 APPEARANCES: (Continued)

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3 **KERR, RUSSELL & WEBER, P.L.C.**

4 PETER KONTIO  
5 **ALSTON & BIRD, L.L.P.**

6 ALLYSON M. MALTAS  
7 **LATHAM & WATKINS, L.L.P.**

8 HOWARD B. IWREY  
9 **DYKEMA GOSSETT, P.L.L.C.**

10 STEPHEN J. SQUERI  
11 **JONES DAY**

12 STEVEN F. CHERRY  
13 **WILMER HALE**

14 LARRY S. GANGNES  
15 **LANE POWELL, P.C.**

16 DONALD M. BARNES  
17 **PORTER, WRIGHT, MORRIS & ARTHUR,**  
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20 **BROOKS, WILKINS, SHARKEY & TURCO,**  
21 **P.L.L.C.**

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1 Detroit, Michigan

2 Thursday, November 17, 2016

3 at about 2:58 p.m.

4 — — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern

8 District of Michigan is now in session, the Honorable

9 Marianne O. Battani presiding.

10 You may be seated.

11 THE COURT: Good afternoon.

12 THE ATTORNEYS: Good afternoon.

13 THE COURT: We have a table empty, is this -- this  
14 is the table? Okay. All right.

15 This is the final approval order for the TED  
16 plaintiffs. Let me start by getting appearances.

17 MR. PARKS: Manly Parks with my colleagues  
18 Wayne Mack, Bill Shotzbarger and Sean McConnell for the truck  
19 and equipment dealers, all from Duane Morris.

20 THE COURT: Okay. Let's start --

21 MS. SWANSON: Joanne Geha Swanson, Your Honor, for  
22 AutoLiv.

23 MR. KONTIO: Peter Kontio, Your Honor, for AutoLiv.

24 MS. MALTAS: Allyson Maltas, Latham Watkins, for  
25 Sumitomo defendants.

1 MR. IWREY: Good afternoon. Howard Iwrey, Dykema,  
2 for the TRW defendants.

3 MR. SQUERI: Good afternoon, Your Honor.  
4 Steven Squeri, Jones Day, on behalf of Yazaki Corporation and  
5 Yazaki North America.

6 MR. CHERRY: Good afternoon, Your Honor.  
7 Steve Cherry from Wilmer Hale for the Denso defendants.

8 MR. GANGNES: Good afternoon, Your Honor.  
9 Larry Gangnes from Lane Powell for the Furukawa defendants.

10 MS. CRABTREE: Molly Crabtree for the GS Electech  
11 defendants.

12 MR. BARNES: Good afternoon, Your Honor.  
13 Don Barnes from Porter Wright for the GS Electech defendants.

14 MR. TURCO: Good afternoon. Mike Turco on behalf  
15 of the Leoni defendants.

16 THE COURT: Okay. Why don't you take the podium,  
17 Mr. Parks. I assume you are the one doing it?

18 MR. PARKS: I am, Your Honor. Thank you.

19 THE COURT: Okay.

20 MR. PARKS: Your Honor, as you know, this motion  
21 covers nine settlements in the wire harnesses and occupant  
22 safety systems cases, seven are from wire harnesses, two are  
23 occupant safety systems.

24 In wire harnesses there are settlements now with  
25 all of the defendants before the Court, and specifically

1 that's the Furukawa group of defendants, the Yazaki group of  
2 defendants, the Denso defendants, Sumitomo defendants,  
3 GS Electech defendants, Tokai Rika defendants and the Leoni  
4 group defendants.

5 In occupant safety systems there are settlements  
6 with all but one defendant in that case, and the settlements  
7 are specifically with the AutoLiv group of defendants and the  
8 TRW group of defendants.

9 Taken together these nine settlements provide for  
10 just over \$5 million in cash benefits, and many of the  
11 settlements mandate various types of what we believe to be  
12 very valuable or to have been very valuable cooperation on  
13 the part of the settling defendants.

14 I should note that while cooperation with the wire  
15 harness case is less relevant today given that all the  
16 defendants have now settled, it should be noted that the  
17 cooperation pledges and some of the cooperation we received  
18 from the settlements was instrumental in securing the  
19 remaining settlements from the other wire harness defendants,  
20 so some of the benefits of that cooperation were already  
21 realized.

22 As set forth in our moving papers, we believe that  
23 these nine settlements are meaningful, substantial, fair,  
24 reasonable and adequate, and on that basis should be granted  
25 final approval. Each of the settlements has unique language

1 defining the settlement class, although the language  
2 variations are generally not significant among the two OSS  
3 settlements and the seven wire harness settlements, although  
4 technically we are talking about nine settlement classes we  
5 are really talking about two generally similar groups of  
6 settlement classes between the two cases. The specific class  
7 definitions are found in the settlements themselves and they  
8 are part of the public record of this case.

9       Regarding the benefits of the settlements, the  
10 chart at page 3 of our motion sets forth each -- the cash  
11 component of each settlement. The amount of each settlement  
12 was a function of several factors including the evidence of  
13 that defendant group's conduct and our assessment of it, the  
14 volume of commerce affected or potentially affected, and the  
15 value of the non-cash components of the settlements, such as  
16 cooperation. We believe that accounting for the prospects of  
17 success, the defenses asserted, the volume of commerce  
18 impacted or potentially impacted, the risks of proceeding,  
19 and those associated with the case otherwise, we think the  
20 settlements are a great outcome for the class.

21       On the topic of notice, notice was provided to  
22 prospective class members in accordance with the notice plan  
23 approved by this Court. That notice plan followed closely  
24 other notice plans previously approved by this Court, most  
25 notably that employed in settlements involving the auto

1 dealer plaintiffs and their classes, and that notice plan was  
2 reviewed and determined to be fair, reasonable and  
3 appropriate by the firm of RG2, which the Court has permitted  
4 in the preliminary approval motion for us to use as  
5 consultants in our notice related issues.

6 RG2 also oversaw execution of the notice plan as  
7 detailed in the declaration of Ms. Tina \* Jango from RG2  
8 which is attached to our moving papers. RG2 set up a  
9 specific settlement website which went live on October 2nd of  
10 this year, purchased the file containing over 50,000 names  
11 and addresses of C level executives who work at approximately  
12 12,000 different truck, agricultural implement, construction,  
13 mining, railroad and commercial vehicle dealerships. Notice  
14 was then mailed by U.S. mail to each of those 50,000  
15 individuals. Notice was also e-mailed to each of those  
16 50,000 individuals representing 12,000 dealerships.

17 An ad regarding the settlement was placed in the  
18 weekly newsletter of the American Truck Dealers Association  
19 newsletter each week throughout October, and the American  
20 Truck Dealers Association is a division of the National  
21 Automotive Dealers Association, or NADA, and is the premier  
22 organizational group in our assessment among truck and  
23 implement dealers in the country.

24 The summary notice was also released via PR  
25 press -- newswire as a press release, the notice was printed



1 in the Wall Street Journal and in Automotive News as well as  
2 the October issue of World Truck Magazine, and an ad was  
3 included in the NADA's e-newsletter as well.

4 We believe and represent to the Court that this  
5 notice program was thorough and was designed to reach and did  
6 reach a very large percentage of the potential class members  
7 here.

8 On the issue of reaction of the class members, the  
9 reaction has been very positive in the sense that there has  
10 been no appearances entered, no objections filed, and no opt  
11 outs from the class.

12 As noted yesterday by counsel for the auto dealer  
13 plaintiffs in connection with the final fairness hearing that  
14 Your Honor heard yesterday afternoon, these businesses that  
15 are members of -- potential members of these classes are  
16 sophisticated, large commercial businesses almost without  
17 exception have legal counsel already established and ongoing  
18 relationships with lawyers, in many instances may even be big  
19 enough to have an in-house lawyer or in-house legal  
20 department, and so these are sophisticated consumers of legal  
21 services and are in the position to speak up and make  
22 themselves known if they are not happy with the provisions of  
23 a class settlement such as this, and we'll understand what  
24 they are receiving when they receive such a notice in the  
25 mail, and we think it is important to understand the silence

1 from the class in the context of who the class is here and  
2 that it is particularly meaningful given who the class is.

3 Our moving papers review the specific elements of  
4 Rule 23, each of which we believe is satisfied by the  
5 settlements before the Court. Those elements and the  
6 arguments regarding them are set forth in our papers, but  
7 they, of course, include likelihood of success on the merits  
8 as weighed against the amount and form of the relief offered  
9 by the settlement as the first.

10 On this issue, I would note, and, of course, the  
11 Court has seen other settlements in other classes including  
12 the auto dealers' classes and some of those settlement  
13 numbers are significantly greater than what we present here  
14 today, and to address that issue, and I know that the  
15 defendants will appreciate this because it is something we  
16 talked about extensively in our settlement discussions, the  
17 volumes of commerce we are talking about here when we are  
18 talking about the volumes of parts, wire harness and related  
19 components and occupant safety system related components, as  
20 compared to the volumes of commerce for automobiles, the  
21 volumes of commerce for truck and equipment vehicles are  
22 significantly smaller and that led, of course, understandably  
23 to a totally different range of settlement discussions and a  
24 totally different range of settlement outcomes in terms of  
25 the dollars. And it is very natural and understandable and,

1 of course, as a point reminded to me many, many times by my  
2 friends here to my left, your right, that the value of the  
3 case has to be considered in light of the volumes of  
4 commerce, and so that was a factor that yielded the numbers  
5 that we are looking at here today for these two part -- or  
6 these two types of parts in these two cases.

7 On the issue of complexity, expense and likely  
8 duration of further litigation, it is well known that this is  
9 a very complex matter, perhaps one of the more complex and  
10 expansive pieces of antitrust litigation MDLs that certainly  
11 I have seen, there is significant expense in pursuing it  
12 among other things with the expense of experts and obviously  
13 the other costs associated with pursuing a case of this  
14 magnitude or cases of these magnitude, and the duration, as  
15 Your Honor noted yesterday, could be a long time, we will  
16 leave it at that, and we think that there is real value in  
17 having a recovery for the class in this shorter term.

18 The opinions of class counsel and the class  
19 representatives are set forth in the papers. We obviously  
20 wouldn't be here or wouldn't have entered into these  
21 settlements unless we believe they were appropriate and  
22 represented good outcomes for the class.

23 The amount of discovery engaged in by the parties,  
24 it certainly was extensive in wire harnesses, we attended  
25 over 50 depositions, there were millions and millions of

1 pages of documents produced by the settling defendants and  
2 discovery was in wire harnesses.

3 In occupant safety systems the settling defendants  
4 provided key information at our request pursuant to Rule 408  
5 that allowed us to fairly evaluate the merits of those claims  
6 and in particular the volumes of commerce likely impacted  
7 which allowed us to be able to advance settlement discussions  
8 at a pace that would be ahead of where discovery might  
9 otherwise permit us to proceed.

10 The reaction of absent class members we've  
11 discussed. There is no risk of fraud or collusion, and  
12 certainly we believe the settlements are in the public  
13 interest because settlements generally are, and we believe  
14 these are fair and appropriate outcomes here.

15 The settlement classes meet the requirements of  
16 Rule 23(a) and (b). They are too numerous for joinder to be  
17 practical, we believe these classes likely comprise of at  
18 least thousands and maybe tens of thousands of dealers.  
19 There are common questions of law and fact as is generally  
20 observed in antitrust conspiracy cases of this sort, this is  
21 no different. The claims of the class representatives are  
22 typical to those of the class. The class representatives are  
23 dealers and have claims that are indistinguishable in  
24 important respects, in the fundamental respects from the  
25 class. And the representation will be -- will fairly and

1 adequately protect the interest of the class, we believe that  
2 it has and will do so.

3 I would certainly be happy to answer any further  
4 questions Your Honor has about any of those issues at this  
5 point.

6 THE COURT: Nothing about any of these issues.

7 MR. PARKS: Okay. Now, one note, we had an issue  
8 yesterday regarding the CAFA or CAFA notice date and timing  
9 of the Court's final order should it be forthcoming here.

10 THE COURT: Right.

11 MR. PARKS: We also have to be sensitive to that  
12 here as well. We have dated our proposed final order as  
13 January 16th, 2017, which would be after the last CAFA notice  
14 period would expire, and we can certainly, to jog the Court's  
15 memory so the Court doesn't have to calendar this item for  
16 itself, we can send along a final order on the 16th of  
17 January or thereabouts.

18 THE COURT: Yes. I would like you to do the same  
19 thing that we did yesterday, if you would send it when it  
20 is -- the time period has expired or the time for the order  
21 to enter along with a little cover memo as to why just to jog  
22 my memory.

23 MR. PARKS: Sure.

24 THE COURT: I don't want to --

25 MR. PARKS: We will do that. Also there was a

1 mention yesterday of individual forms of final judgment for  
2 the individual settling defendants, and we have talked about  
3 this with counsel for the settling defendants and we agree  
4 probably the easiest way to proceed there is on the same day  
5 we have reached the 91st day for the last CAFA notice day to  
6 send an individual final judgment for all of the settling  
7 defendants on that date, and we can include it with the final  
8 order that we are proposing here for the overall approval of  
9 the settlement.

10 THE COURT: Okay. Just a question on that CAFA  
11 notice. Do you -- in general I have never had CAFA come back  
12 or heard of it. I mean, do you anticipate any CAFA problems  
13 with this?

14 MR. PARKS: We don't, Your Honor. Our sense -- my  
15 sense, I will speak specifically for me, my sense is that the  
16 attorneys general are well aware of these cases, they have  
17 been around for quite a long time. I am aware that some of  
18 the attorneys general have been participants in various  
19 aspects of the discovery in wire harnesses in particular, and  
20 I don't think there is any surprise or lack of awareness, and  
21 there has been no communications suggesting that these  
22 attorneys general would like to appear or be heard or object  
23 in any way to the settlements. So I really don't anticipate  
24 any issue on that front, it is simply a matter of making sure  
25 that we get to the appropriate period and don't create a

1 technical problem for everyone.

2 THE COURT: I just wondered thinking about it  
3 because we do have the attorneys general who became part of  
4 the case but not all of them.

5 MR. PARKS: Right, right. So that's what I have to  
6 address in terms of the motion for final approval. I know we  
7 also have a motion for approval of allocation plans and a fee  
8 motion as well, and I can turn to those if you would like me  
9 to or if you have any questions for me I'm happy to answer?

10 THE COURT: No, you can turn to those and we will  
11 do it all at once.

12 MR. PARKS: Great. Also in front of the Court is a  
13 motion for approval of allocation plans.

14 THE COURT: Wait a minute. I have to stop you.  
15 One other thing while we are there, is there any comment from  
16 any defendant on the settlement?

17 (No response.)

18 THE COURT: Okay. Everybody is saying no. Okay.

19 MR. PARKS: There is a motion for approval of  
20 allocation plans. We have a proposed specific allocation  
21 plan for the wire harness settlement -- or settlements and  
22 another specific allocation plan for the occupant safety  
23 systems settlements. Each is tailored to the facts and  
24 circumstances of those cases as we have determined them to be  
25 through discovery and other information we have been able to

1 obtain and review. Although the allocation plans are similar  
2 in overall structure and design to those proposed by the auto  
3 dealer plaintiffs and previously approved by the Court, that  
4 is they ensure some measure of recovery for every claimant  
5 with a valid claim, it is on a point system where by simply  
6 submitting a valid claim you are entitled to a certain  
7 minimum number of points, and then based on the nature of  
8 your claim, the types of vehicles, the number of units and/or  
9 number of parts you would earn additional points for each  
10 such unit or part within the period, and then ultimately when  
11 you determine the number of claims and the number of points  
12 then the settlement funds would be divided proportionately  
13 among the claimants.

14           The details of each of the two plans are slightly  
15 different as, of course, they should be because we had  
16 slightly different evidence with respect to what models or  
17 vehicles were impacted in our assessment by the alleged  
18 conduct.

19           And they are also -- the point system we have  
20 employed is weighted to account for the variations in  
21 economic value of certain components. So the purchase of a  
22 seat belt is accorded a different economic value than the  
23 purchase of an airbag system, for example, because a seat  
24 belt would be less expensive than an entire airbag system,  
25 and that's reflected in the point value structure in the



1 occupant safety system settlement.

2           The allocation plans we have proposed to the Court  
3 have been reviewed and endorsed by RG2 from a fairness  
4 perspective, they are a settlement administration firm, we  
5 are also using them for notice purposes here as well, but  
6 they are a settlement administrator and we intend to use them  
7 as the settlement administrators for the settlements, and  
8 they have reviewed the plans and determined them to be  
9 workable from a settlement administration standpoint, which I  
10 think is important.

11           THE COURT: Who is William Wickersham?

12           MR. PARKS: Wickersham is a principal at RG2, and  
13 Tina Jango is also an employee of RG2. Those were the two  
14 principal resources at RG2 that we are dealing with and who  
15 will be overseeing the claims process should the Court grant  
16 final approval of these settlements.

17           As I mentioned, the plan details are set forth in  
18 the moving papers and I'm certainly happy to answer any  
19 questions the Court has about the plans or the details of the  
20 plans.

21           THE COURT: No. It looks like a very similar point  
22 system to what we used in the other cases with a few  
23 variations.

24           MR. PARKS: It seemed to be a practical way to  
25 proceed and we certainly didn't feel we needed to come up

1 with something wholly brand new when something that seemed  
2 pretty workable was out there and so we tried to just take  
3 what was there and modify it in a way that we felt was  
4 appropriate for the facts and circumstances that we had in  
5 our cases.

6 THE COURT: All right.

7 MR. PARKS: All right. And so also in front of the  
8 Court and finally is a motion for award of attorney fees and  
9 payment of -- or reimbursement of certain expenses and  
10 service awards.

11 On the attorney-fees component of that motion, the  
12 award of fees if granted would represent the first fees of  
13 any kind recovered in this entire MDL by counsel for the  
14 truck and equipment dealers. We have not been paid any funds  
15 at all to date in the two plus years we've been involved in  
16 this litigation. We have during that time advanced something  
17 over half a million -- over \$600,000 worth of expenses in  
18 pursuit of just these two particular cases, occupant safety  
19 systems and wire harnesses, and, of course, we are also  
20 involved in a number of other proceedings and are, of course,  
21 advancing expenses in those cases as well.

22 The movant seeks fees equal to one-third of the  
23 total amount of the settlements, the total amount of  
24 settlements is approximately \$5.1 million. The fees we are  
25 requesting would be 1.538833 million, that's \$1,538,833. The

1 settlement amount -- and that number is calculated by the  
2 settlement amount minus escrow agent costs of approximately  
3 \$56,000 and notice and claims administration related costs  
4 and projected costs of about \$500,000.

5 The fee represents less than 45 percent of the  
6 Loadstar for our firm on these two cases, the Loadstar being  
7 around \$3.5 million time invested in pursuing these two cases.

8 THE COURT: What is the net to the parties in that  
9 roughly?

10 MR. PARKS: I'm sorry. What is the what?

11 THE COURT: From the 5 million or 5.1 million, what  
12 would be the net to the parties?

13 MR. PARKS: I don't have that math in front of me,  
14 but I believe it would be in -- north of \$3.5 million.

15 THE COURT: Okay. Thank you.

16 MR. PARKS: Or in the range of \$3.5 million, but I  
17 will double check the math, and it certainly is what it is.

18 THE COURT: It is close enough.

19 MR. PARKS: And to give you a little bit of further  
20 insight into the Loadstar, we have attorney hours for  
21 Duane Morris attorneys, and we are the sole firm involved as  
22 counsel for the truck and equipment dealers in these  
23 proceedings, through the end of September of this year of  
24 5,462 hours in furtherance of these two cases, and, again,  
25 there has obviously been time since then including preparing

1 for the hearing today and so forth, but through the end of  
2 September it is just under 5,500 hours towards these two  
3 cases.

4 In addition, we have 1,173 paralegal hours again  
5 just on these two cases, and approximately 98 litigation  
6 support staff hours on these two cases, and that's primarily  
7 IT/IS litigation support and research librarian support.

8 The activities we have performed in those hours are  
9 detailed on page 5 and 6 of our motion papers and include  
10 extensive legal work in these cases.

11 I think it is important to note that the criminal  
12 enforcement proceedings that brought about this civil MDL  
13 proceeding were in the case of wire harnesses and occupant  
14 safety systems focused entirely on passenger vehicles, not on  
15 trucks or equipment, and that meant in order for us to build  
16 a case that the truck and equipment components were impacted  
17 by these conspiracies we had to develop that evidence from  
18 scratch, and we are very pleased to have been able to have  
19 done so to the point we were able to secure meaningful  
20 settlements for the class here, and absent having been able  
21 to do that there would be no recovery at all for the class of  
22 truck or equipment dealers.

23 I can go on and talk about service awards, but I'm  
24 happy to field any questions Your Honor has about the  
25 attorney fee request.

1           THE COURT: When you have down your library, what  
2 are you talking about, library staff, who's the library  
3 staff?

4           MR. PARKS: So we have an in-house library at my  
5 law firm where we have research librarians, and they would  
6 help us with things like making sure we have the correct  
7 address for an overseas defendant so that we would be able to  
8 get service to that defendant properly. They would also help  
9 us do research on background information about components  
10 that would be, for example, occupant safety systems, what  
11 information is available in any public space about who is  
12 purchasing those, what types of truck or equipment OEMs are  
13 purchasing those products, which types of products they  
14 purchase, market studies about relative market share, those  
15 are all things that rather than having lawyers at much higher  
16 rates do that kind of research we had research professionals  
17 who are really experts at doing that kind of research do for  
18 us and then provide us with the results. We think that's a  
19 more efficient way to handle it, that's how we would handle  
20 similar matters for our hourly rate-paying clients.

21           THE COURT: Okay. Hold on a minute. Molly.

22           (An off-the-record discussion was held at  
23 3:23 p.m.)

24           THE COURT: Are there any other non-lawyer jobs  
25 included in your Loadstar?

1 MR. PARKS: There are. There are IS/IT litigation  
2 support professionals, these are technology support folks.  
3 We have had a lot of digital or electronic discovery in this  
4 case both in terms of collecting databases and electronic  
5 documents from the class representatives and taking  
6 electronic productions that have been made by the defendants,  
7 uploading them and getting them in a viewable and  
8 understandable format, and that, in my experience,  
9 unfortunately I'm not an expert at some of the technological  
10 aspects of that.

11 THE COURT: Would that be the cost though versus  
12 the attorney fees?

13 MR. PARKS: Well, these are in-house folks at our  
14 firm. Those services can be provided by outside vendors but  
15 we have a relatively fully developed IS/IT litigation support  
16 staff at Duane Morris and, again, it is common practice for  
17 us for our hourly billable clients to charge the rates that  
18 we have charged for these services because if we didn't do  
19 that we would have to send the matter out to an outside  
20 vendor and pay an outside vendor to do the same thing.

21 THE COURT: Okay.

22 MR. PARKS: Now with respect to the service awards,  
23 here the class representatives have performed and continue to  
24 perform an invaluable service to the class. Simply put,  
25 without the class representatives there would be no truck or

1 equipment dealer actions in this MDL and there would be no  
2 recovery for any of the class members. The class  
3 representatives have invested considerable time and energy in  
4 this case gathering and producing over nearly 900,000 pages  
5 of documents to date with further productions to come, very  
6 likely to exceed a million pages before productions are  
7 complete.

8           They have met and spoken with lawyers at class  
9 counsel on countless occasions about a wide variety of issues  
10 including -- or consulting about issues relating to truck and  
11 equipment vehicles, parts and the overall marketplace, and  
12 they have produced highly sensitive sales and inventory  
13 databases, and much, much more is detailed in our papers.

14           The service awards requested are \$10,000 per  
15 plaintiff, and that is less than half of the service awards  
16 that I believe, at least as I understand it, were requested  
17 and approved by this Court for other dealer class  
18 representatives in other settlements that's a part of this  
19 MDL.

20           THE COURT: What about -- I mean, now we have the  
21 Blue Cross Blue Shield case, it gives us a little bit more  
22 direction as to the service awards. What about the time your  
23 class reps have spent, have you -- I don't know who would  
24 keep track of it because I'm sure they didn't keep track of  
25 it outside of probably saying it was a lot.

1 MR. PARKS: I can't speak to the particular hours.  
2 What I can say is that it's easily hundreds of hours because  
3 I have been on calls and been involved in communications and  
4 other projects that the folks who were working with the  
5 different class representatives had to undertake at our  
6 request that have easily used that much time. We have  
7 obviously had to consult about understanding the way that the  
8 class representatives' various documents are kept, we have to  
9 understand their computer systems, we have to understand  
10 their databases in order to collect and produce those things  
11 or determine if they might be responsive.

12 We also have to understand the technological  
13 aspects of the parts we are talking about. I'm not a  
14 mechanic by trade and the folks fortunately at these class  
15 representatives do understand the mechanical componentry of  
16 trucks and equipment and have provided really invaluable  
17 service over a number of phone calls to help us understand  
18 aspects, for example, what are the components of a wire  
19 harness, how do they work, how are they different in a truck  
20 versus in a passenger vehicle and those types of issues which  
21 are very important to being able to advance our case and  
22 advance the case on behalf of the class.

23 THE COURT: How many named plaintiffs did you have?

24 MR. PARKS: I believe 18, but obviously the face of  
25 the complaint will -- whatever that number is is the



1 appropriate number.

2 THE COURT: And each of them have expended these  
3 hours that you are talking about to --

4 MR. PARKS: Collectively, yes, absolutely. Now,  
5 there will be some that may have more input than others  
6 depending on how big that business is, but it seemed to us to  
7 be very difficult to distinguish that one particular  
8 plaintiff may have spent a little bit more or a little less  
9 time and certainly the obligations on them all have been  
10 essentially equivalent.

11 THE COURT: How about depositions?

12 MR. PARKS: There will be depositions forthcoming.  
13 To date there has been one deposition of a representative  
14 from the parent company of these companies and so that  
15 involved obviously considerable preparation and sitting for  
16 that deposition.

17 THE COURT: All right. Did you have some formula  
18 to come up with this \$10,000 that the Court should consider?

19 MR. PARKS: Not particularly, other than we looked  
20 at the service awards that have been approved, we thought  
21 that in this instance because the settlements were a lower  
22 amount, meaning there is less available to the class to  
23 disperse, but there were quite a bit of the same, in fact,  
24 possibly more obligation in terms of production of documents  
25 and so forth in some of the class representatives in the

1 other cases, it seemed to us to be the right number, but that  
2 is why we are asking for a meaningfully less amount than has  
3 been awarded to some of the other class representatives in  
4 some of the other settlements.

5 THE COURT: Okay. Thank you.

6 MR. PARKS: We have also asked for reimbursement of  
7 past expenses connected directly to these two cases in the  
8 amount of \$674,137, and those are detailed in Exhibit 2 of  
9 our motion. I'm happy to answer any questions the Court has  
10 about any of those expenses.

11 THE COURT: What was the expense for arbitrators or  
12 mediators, what is that?

13 MR. PARKS: As I understand it, when we have a  
14 mediation before the Special Master that there is a charge  
15 that the parties -- in connection with the OEM process, I  
16 believe there is a charge that the parties involved in that  
17 process share, and we paid half of it and I believe the  
18 defendants participating also paid half.

19 THE COURT: This is the cost for the Master, that's  
20 what you are saying?

21 MR. PARKS: Yes, correct. That's our share of it,  
22 which is 50 percent of the cost assessed.

23 THE COURT: The forensic support that you have  
24 listed, will that be support that will be used also in the  
25 other parts or is this going to end up --

1 MR. PARKS: We will be using the same vendors,  
2 however, that's at best as we can determine the forensic  
3 support specific to the documents and materials in these  
4 cases. There will be productions from other defendants in  
5 other cases, we will be using the same vendors for those  
6 services, and there will certainly be some efficiencies of  
7 scale, there will be some initial costs that were incurred to  
8 get some of the things up to speed for wire harness as the  
9 lead case that I suppose in theory you could spread out  
10 amongst the different cases, but it unfortunately defied our  
11 abilities to be able to be more refined in this number than  
12 the number you see here.

13 THE COURT: I'm sorry. Just a minute.

14 (An off-the-record discussion was held at  
15 3:33 p.m.)

16 THE COURT: Okay.

17 MR. PARKS: So the only other points I would simply  
18 note is that we have asked for the Court to approve notice  
19 expenses up to a cap of \$500,000, those have been provided  
20 for already in the terms of the settlements, and to the  
21 extent that we don't use that much in notice and  
22 administration costs the money will revert to the settlement  
23 class for dispersal and for escrow fees of \$56,000.

24 THE COURT: Okay. Thank you. All right. Any  
25 defendant have any statement or anything that anybody wants

1 before I proceed?

2 (No response.)

3 THE COURT: No. Okay.

4 MR. PARKS: Yes, ma'am.

5 THE COURT: All right. Certainly, I really am  
6 basically reiterating what you said because I have looked at  
7 all of this and this \$5.1 million settlement there was  
8 certainly notice to everybody and I guess I can address that  
9 now. You indicated that you had mail and e-mail to these  
10 50 some thousand individuals plus notice in the newspapers  
11 particularly relating to truck and equipment, and there is  
12 a -- in these ads the link to the website, and I think that  
13 this notice is fair notice and certainly is deemed to reach  
14 most of these individuals.

15 There have been no objections and no opt outs,  
16 that's a very good sign of a good settlement. And the Court  
17 finds that in reviewing the standards which, of course, we  
18 have gone through a number of times in this case but I find  
19 that the -- that the likelihood of success in this case has  
20 been -- the case has been vigorously defended, the Court is  
21 well aware of the litigation that has gone on in this case,  
22 and actually in all of the antitrust cases, and the  
23 likelihood of success is there but there is the likelihood  
24 that there would not be success, I think that's a big issue  
25 in this case, and so it is a significant factor in settling

1 this case.

2 Certainly it is very complex, I don't think I need  
3 to go into the complexity of the case. The expense, we can  
4 see how expensive it is just for these two parts that we have  
5 in terms of the costs that have been incurred in resolving  
6 it, and the future costs in terms of the notifications,  
7 et cetera.

8 The judgment of experienced counsel is very  
9 significant to this Court because the Court does note that  
10 counsel is experienced and well-versed in these areas, it has  
11 been obvious to me in terms of all counsel in this case, and  
12 the Court does believe that counsel has operated at arm's  
13 length in coming up with a fair and reasonable settlement in  
14 the best interest of the classes.

15 The reaction of class members we have gone over,  
16 there really has been none, this is good. The public  
17 interest is one that is well served by this settlement due to  
18 the fact that the Court does find it is fair and reasonable,  
19 and was conducted in arm's length negotiations with  
20 experience counsel.

21 The notice was proper, I have already gone over  
22 that. And in terms of the 23(a) factors, certainly there is  
23 numerosity, I don't think we need to go into that, joinder  
24 would be absolutely impractical. There is commonality here,  
25 the antitrust price fixing cases by their nature deal with

1 common legal and factual -- is that you going out? What is  
2 that?

3 UNIDENTIFIED ATTORNEY: Sorry, Your Honor.

4 THE COURT: Okay. There are too many bells and  
5 whistles.

6 So they do have common questions.

7 The claims of the representative parties are  
8 typical of the claims of the class because the injuries arise  
9 from the same wrong to one person, to the representative as  
10 to the whole class, and the representative will fairly and  
11 adequately protect the interest of the class because they  
12 have the same interest as other class members, and the  
13 allocation plans don't give any preferential treatment to any  
14 of the named representatives.

15 Rule 23(b)(3) is satisfied because the class  
16 plaintiffs demonstrate that common questions predominate over  
17 questions affecting only individuals. The claims involve  
18 conspiracies from which each of the proposed settlement class  
19 members' injuries arise. Evidence is clear that a violation  
20 as to one settlement class member is common to the class and  
21 will provide a violation to all. Certainly the class method  
22 is superior to adjudicating these as individual claims, so I  
23 do find that the prerequisites of Rule 23 are met.

24 The Court approves the plan of allocation. The  
25 Court has reviewed a number of these plans, and I think I

1 have said before, as to the mathematics I can't agree but as  
2 to the expertise of the individuals involved in developing  
3 these plans as to the use of the point system is very logical  
4 to the Court and, again, I rely on the expertise of counsel  
5 as to their input in the allocation plan, so I do find that  
6 they are fair and reasonable and will compensate individuals  
7 based on their injury and dependent upon the volume,  
8 et cetera. I think all of these factors have been  
9 considered.

10 The Court should award attorney fees. Now, this is  
11 an interesting issue because you have heard what the Court  
12 has done on it and I have basically yesterday said I would do  
13 20 percent, but in your case I'm going to give you 30 percent  
14 and I'm doing that because looking at the crosscheck that has  
15 been made with the Loadstar but specifically looking at the  
16 amount of the settlement, the fact that this is the first  
17 monies given to the plaintiffs who have been working on this  
18 and I think that -- what did we come up with, 1 point what  
19 million?

20 MR. PARKS: The 1.538 is the number we asked based  
21 on 33 percent, so the math is the math but it will be a  
22 little bit less than that.

23 THE COURT: Yeah, just over a million, I think is a  
24 fair and reasonable fee for this, and that amount comes, the  
25 30 percent, after the costs that have been allocated here.

1 The Court does award the costs that have been submitted, they  
2 have been delineated by category, and the Court with the  
3 questions answered that I have will award these costs.

4 The next issue is service awards, and I think that  
5 the service awards issue has become a little more difficult  
6 because of the recent case of Blue Cross Blue Shield, but I  
7 also have noted through the discovery issues in this case the  
8 amount of time that these representative class members have  
9 to put in and the discovery that they have, I mean, I don't  
10 think in the trucks but we have in the others people who  
11 don't want to be representatives anymore because it is just  
12 too much trouble, and given the hundreds of hours that you  
13 have indicated, Counsel, that these 18 or so class  
14 representatives have put in, I think that it is very fair to  
15 award them the \$10,000, this is less than in the other class  
16 but this is a smaller litigation so the Court will award the  
17 \$10,000 service award to each of the representative named  
18 class members.

19 All right. Is there anything that I have  
20 forgotten?

21 MR. PARKS: I don't believe so. We will, as we  
22 have discussed, get you an order around January 16th to allow  
23 the CAFA notice period to expire, and then obviously if there  
24 are intervening developments with the attorneys general we  
25 can address that, I don't believe there will be anything like



1     that, and we will also get you individual final judgment  
2     forms with input from defense counsel on the format of those  
3     final judgment documents at that same time with the  
4     memorandum that the Court has requested reminding the Court  
5     of why we are providing those at that time.

6             THE COURT:   Okay.   Sounds good.

7             MR. PARKS:   Thank you.

8             THE COURT:   Thank you very much.

9             MR. PARKS:   I appreciate it.

10            THE COURT:   Again, happy holidays to everybody.

11            MR. PARKS:   Thank you.

12            (Proceedings concluded at 3:43 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of Automotive Parts Antitrust Litigation, Case No. 12-2311, on Thursday, November 17, 2016.

s/Robert L. Smith  
Robert L. Smith, RPR, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: 12/22/2016  
Detroit, Michigan